

Notice of Allowability

Application No.

10/712,363

Examiner

Angela Bertagna

Applicant(s)

DAWSON, ELLIOTT P.

Art Unit

1637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 11/15/06.
2. ☒ The allowed claim(s) is/are 1-11,13-26,30,32-45 and 47-59.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

JEFFREY FREDMAN
PRIMARY EXAMINER

11/16/07

EXAMINER'S AMENDMENT

Status of the Application

1. Applicant's response filed November 15, 2006 is acknowledged. Claims 1-27 and 30-59 are currently pending. Claims 1-3, 25, and 26 have been amended. Claims 11-22 and 27 are withdrawn as being drawn to a non-elected invention. Claims 30-59 are new.

Election/Restriction

2. Claims 1-11 and 22-26 are directed to an allowable product. Pursuant to the procedures set forth in MPEP § 821.04(b), claims 11 and 13-22, directed to the process of making or using the allowable product, previously withdrawn from consideration as a result of a restriction requirement, are hereby rejoined and fully examined for patentability under 37 CFR 1.104. Newly added claims 30, 32-45, and 47-59 also contain all of the limitations of the allowable product.

Because a claimed invention previously withdrawn from consideration under 37 CFR 1.142 has been rejoined, **the restriction requirement between groups I and II as set forth in the Office action mailed on March 21, 2006 is hereby withdrawn.** In view of the withdrawal of the restriction requirement as to the rejoined inventions, applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once the restriction requirement is withdrawn, the provisions of 35 U.S.C.

Art Unit: 1637

121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

3. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with David Farrah on January 10, 2007. Authorization was also given to cancel claims 12, 27, 31, and 46 without prejudice or disclaimer from further prosecution.

The application has been amended as follows:

Paragraph 1 on page 1 of the specification has been amended to insert --filed July 18, 2002, now abandoned-- after the phrase "United States Patent Application 10/360,790,".

Claim 12 is cancelled.

Claim 18 is amended to delete --, 12-- after "claim 11" and before "or 13".

Claim 19 is amended to delete --, 12-- after "claim 11" and before "or 13".

Claim 20 is amended to delete --, 12-- after "claim 11" and before "or 13".

Claim 21 is amended to delete --, 12-- after "claim 11" and before "or 13".

Claim 22 is amended to delete --, 12-- after "claim 11" and before "or 13".

Claim 27 is cancelled.

Claim 31 is cancelled.

Claim 37 is amended to delete --, 31-- after "claim 30" and before "or 32".

Art Unit: 1637

Claim 38 is amended to delete --, 31-- after "claim 30" and before "or 32".

Claim 39 is amended to delete --, 31-- after "claim 30" and before "or 32".

Claim 40 is amended to delete --, 31-- after "claim 30" and before "or 32".

Claim 41 is amended to delete --, 31-- after "claim 30" and before "or 32".

Claim 46 is cancelled.

Claim 52 is amended to delete --, 46-- after "claim 45" and before "or 47".

Claim 53 is amended to delete --, 46-- after "claim 45" and before "or 47".

Claim 54 is amended to delete --, 46-- after "claim 45" and before "or 47".

Claim 55 is amended to delete --, 46-- after "claim 45" and before "or 47".

Claim 56 is amended to delete --, 46-- after "claim 45" and before "or 47".

4. The following is an examiner's statement of reasons for allowance: SEQ ID NO: 16 contains a central mismatch compared to the nucleic acid sequences found in the prior art. No teaching or suggestion to make this mismatch was found in the prior art. Therefore, the primer set including SEQ ID NO: 16 is novel and non-obvious. Also, the prior art does not teach or suggest the variant of SEQ ID NO: 1 where the cytosine at position 1522 is substituted with thymine.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Angela Bertagna whose telephone number is 571-272-8291. The examiner can normally be reached on M-F, 7:30 - 5.

Art Unit: 1637

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Benzion can be reached on 571-272-0782. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Angela Bertagna
Examiner, Art Unit 1637
January 12, 2007

amb


JEFFREY FREDMAN
PRIMARY EXAMINER
1/12/07